

(b) In the event of a default involving a loan to an Indian tribe or tribal corporation made under this section which is secured by an interest in land within such tribe's reservation (as determined by the Secretary of the Interior), including a community in Alaska incorporated by the Secretary of the Interior pursuant to the Indian Reorganization Act (25 U.S.C. 461 *et seq.*), the lender shall only pursue liquidation after offering to transfer the account to an eligible tribal member, the tribe, or the Indian housing authority serving the tribe. If the lender subsequently proceeds to liquidate the account, the lender shall not sell, transfer, or otherwise dispose of or alienate the property except to one of the entities described in the preceding sentence.

[67 FR 16971, April 9, 2002]

#### **§ 3565.453 Disposition of the property.**

(a) *Liquidation plan.* The lender will, within 30 days after a decision to liquidate, submit to the Agency in writing its proposed detailed plan of liquidation. Upon approval by the Agency of the liquidation plan, the lender will proceed to liquidate. At a minimum, this plan must contain the following information:

(1) Such proof as the Agency requires to establish the lender's ownership of the guaranteed loan promissory note and related security instruments and a copy of the payment ledger if available which reflects the current loan balance and accrued interest to date and the method of computing the interest.

(2) A full and complete list of all collateral including any personal and corporate guarantees.

(3) The recommended liquidation methods for making the maximum collection possible on the indebtedness and the justification for such methods, including recommended actions for:

- (i) Acquiring and disposing of all collateral;
- (ii) Collecting from guarantors;
- (iii) Obtaining an appraisal of the collateral;
- (iv) Setting the proposed date of foreclosure; and
- (v) Setting the proposed date of liquidation.

(4) Necessary steps for protection of the tenants and preservation of the collateral.

(5) Copies of the borrower's latest available financial statements.

(6) Copies of the guarantor's latest available financial statements.

(7) An itemized list of estimated liquidation expenses expected to be incurred along with justification for each expense.

(8) A schedule to periodically report to the Agency on the progress of liquidation.

(9) Estimated protective advance amounts with justification.

(b) *Filing an estimated loss claim.* Upon Agency concurrence in the liquidation plan and when the lender owns any or all of the guaranteed portion of the loan, the Agency may, in accordance with program guidance, pay an estimated loss payment based on an Agency determined percentage of the approved estimate of the loss. The estimated loss payment will be based in the liquidation value of the collateral. If such payment is made, it will be applied to the outstanding principal balance owed on the guaranteed debt. The lender will discontinue interest accrual on the defaulted loan in accordance with Agency procedures.

(c) *Property disposition.* Once the liquidation plan has Agency approval, the lender must make every effort to liquidate the property in a manner that will yield the highest market value consistent with the protections afforded to tenants contained in 7 CFR part 1944, subpart L or successor regulation. This liquidation process must be completed within 9 months from the lender's decision to liquidate, unless otherwise approved by the Agency.

(d) *Transmitting payments and proceeds to the Agency.* When the Agency is the holder of a portion of the guaranteed loan, the lender will transmit to the Agency its pro rata share of any payments received from the borrower, liquidation, or other proceeds.

#### **§ 3565.454 [Reserved]**

#### **§ 3565.455 Alternative disposition methods.**

The Agency, in its sole discretion, may choose to obtain an assignment of

the loan from the lender or conveyance of title obtained by the lender through foreclosure or a deed-in-lieu of foreclosure.

(a) *Assignment.* In the case of an assignment of the loan, the assignment of the security instruments or the security must be in written and recordable form. Completion of the assignment will occur once the following transactions are completed to the Agency's satisfaction.

(1) Conveyance to the Agency of all the lender's rights and interests arising under the loan.

(2) Assignment to the Agency of all claims against the borrower or others arising out of the loan transactions, including:

(i) All collateral agreements affecting financing, construction, use or operation of the property; and

(ii) All insurance or surety bonds, or other guarantees, and all claims under them.

(3) Certification that the collateral has been evaluated for the presence of contamination from the release of hazardous substances, petroleum products or other environmental hazards which may adversely impact the market value of the property and the results of that evaluation.

(b) *Conveyance of title.* In the case of a conveyance of title to the property, the lender must inform the Agency in advance of how it plans to acquire title and a timetable for doing so. The Agency will accept the conveyance upon receipt of an assignment to the Agency of all claims of the lender against the property and assignment of the lender's rights to any operating funds and any reserves or escrows established for the maintenance of the property or the payment of property taxes and insurance.

**§ 3565.456 Filing a claim.**

Once the lender has disposed of the property or the Agency has agreed to accept an assignment of the loan or conveyance of title to the property, the lender may file a claim for the guaranteed portion of allowable losses. All claim amounts must be calculated in accordance with this subpart and be approved by the Agency.

**§ 3565.457 Determination of claim amount.**

(a) *Maximum guarantee payment.* The maximum guarantee payment will not exceed the amount of guarantee percentage as contained in the guarantee agreement (but in no event more than 90%) times the allowable loss amount.

(b) *Date of loss.* The date of loss is the earliest of the date on which the property is foreclosed or acquired or the proposed date of foreclosure or acquisition in the liquidation plan, unless an alternative date is approved by the Agency. Where the Agency chooses to accept an assignment of the loan or conveyance of title, the date of loss will be the date on which the Agency accepts assignment of the loan or conveyance of title.

(c) *Allowable claim amount.* The allowable claim amount must be calculated by:

(1) Adding to the unpaid principal and interest on the date of loss, an amount approved by the Agency for payments made by the lender for amounts due and owing on the property, including:

(i) Property taxes and other protective advances as approved by the Agency;

(ii) Water and sewer charges and other special assessments that are liens prior to the guaranteed loan;

(iii) Insurance on the property;

(iv) Loan guarantee fees paid after default; and

(v) Reasonable liquidation expenses.

(2) And by deducting the following items:

(i) Any amount received by the lender on the account of the guaranteed loan after the date of default;

(ii) Any net income received by the lender from the secured property after the date of default; and

(iii) Any cash items retained by the lender, except any amount representing a balance of the guaranteed loan not advanced to the borrower. Any loan amount not advanced will be applied by the lender to reduce the outstanding principal on the loan.

(d) *Lender certification.* The lender must certify that all possibilities of collection have been exhausted and that all of the items specified in paragraph (c) of this section have been